

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 10, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on November 10, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioners Mike Joyner and Ricky Wright were all present at the meeting.

MINUTES OF OCTOBER 8, 2004 MEETING

Chairman Fox requested a motion to waive the reading of the minutes from the October 8, 2004 meeting into the record. Commissioner Wright made the motion. Seconded by Commissioner Joyner. So ordered. Commissioner Joyner made a motion to approve the minutes. Seconded by Commissioner Wright. So ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioners Jordan and Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Neither Commissioner Wright nor Commissioner Joyner found conflicts of interest. Chairman Fox stated that he wished to recuse himself from ruling on Hearing Case #1, Lloyd's Grocery, First Offense Case #4, K 38 Baja Grill, and First Offense Case #46, Firehouse.

I. HEARING CASES- 52 listed

Chairman Fox asked Chief Deputy Counsel Fred A. Gregory for information pertaining to Case #1, Lloyd's Grocery. Mr. Gregory explained that Lloyd's Grocery's permits were suspended based on information that a minor purchased wine from permittee Sheila Lloyd. Ms. Lloyd had been approached by the minor's mother and asked to refrain from selling wine to the minor after a previous incident. Mr. Gregory explained that the case was set for hearing, but before the hearing occurred, it was discovered that the information given concerning the case was not accurate, so the case was dismissed. Mr. Gregory stated that the permits had been suspended for 44 days during the proceedings, and that he felt this was an adequate suspension for this matter. Therefore, Mr. Gregory suggested that the Offer in Compromise be amended to give the permittee credit for the 44-day suspension. Commissioner Joyner made a motion to accept Mr. Gregory's recommendation. Seconded by Commissioner Wright. So ordered.

Mr. Gregory stated that four permittees were present who wished to comment on their cases.

#50 – Rock Inn- Permittee Lenzie Blackwell spoke to the Commission concerning his case. ALE Agent G.P. Hughes had found three containers of spirituous liquor in three separate coats on the premises of Rock Inn on October 2, 2003. Mr. Blackwell stated that he occasionally allowed the homeless use his store's restroom, and he suspected that one of the homeless had left the bottles of spirituous liquor in the restroom.

Mr. Blackwell further stated that his business had been vandalized and burglarized on the night of November 8, and that he was currently out of business.

Chairman Fox inquired as to a previous spirituous liquor violation at Rock Inn, and Mr. Blackwell replied that the previous violation had occurred in the same manner. He stated that he periodically allowed the homeless to shelter in his store, and that occasionally they would leave bottles of spirituous liquor behind. Chairman Fox asked Mr. Blackwell if he realized that he was responsible for activity occurring on the licensed premises of Rock Inn, and Mr. Blackwell replied that he was aware of that fact.

Chairman Fox stated that due to the previous violation, the penalty could not be reduced. Chairman Fox suggested that the penalty stand as 15 days suspension. Mr. Blackwell stated that he wanted the suspension to end by December 15, 2004 so he could host a dinner for the area homeless outside his establishment.

Assistant Counsel Renee Cowick explained that Administrative Law Judge Fred Morrison, Jr. had previously asked Mr. Blackwell if he would accept a suspension of 30 days for this case, and Mr. Blackwell stated that he would. Ms. Cowick explained to Mr. Blackwell that he could still host his dinner while his permits were suspended, but that he could not sell or possess any alcoholic beverages during the time of the suspension.

Mr. Blackwell asked that the suspension begin on November 15, 2004. Chairman Fox suggested that Rock Inn be issued a penalty of 15 days suspension to begin on November 15, 2004. Commissioner Wright seconded and Commissioner Joyner agreed. So ordered.

Hearing Case #44 – George's Garage- Permittee Jay Mehdain spoke to the Commission concerning his case. He stated that an underage person who purchased an alcoholic beverage at his establishment did so by using false identification. He had used a forged driver's license to enter the establishment, and in so doing was given a wristband indicating that he was over 21 years of age. The bartender served the minor an alcoholic beverage based upon his possession of the wristband.

Chairman Fox asked if Mr. Mehdain's employees had received training, and Mr. Mehdain stated that they had hosted an ABC class in 2003.

Chairman Fox stated that the current violation was the second violation for George's Garage within the past three years, and both concerned underage sales. Mr. Mehdain stated that he felt this violation occurred after his staff had done all they could to prevent it; since the minor used a fake ID to enter the establishment. Chairman Fox asked for information about how George's Garage's staff checks identification. Mr. Mehdain replied that security personnel check

identification at the door, and if the person is over 21 years old, they are given a wristband that allows them to purchase alcoholic beverages at the bar. Commissioner Joyner asked what kind of false identification the minor used, and Mr. Mehdain replied that he did not know, as he was unaware of the details of the case.

Chairman Fox explained that the ALE Agent had stated in his report that he talked to the bartender and asked how old the minor appeared to be. The bartender replied that the minor appeared to be 17 or 18 years old. Chairman Fox explained that bartenders are also responsible for checking identification, and not serve based only on the customer's possession of a wristband.

Chairman Fox recommended that George's Garage host another ABC class, and Mr. Mehdain stated that he had already hosted one recently. Chairman Fox moved that George's Garage's permits be suspended for 20 days, with such suspension avoided upon payment of \$2,000.00. Seconded by Commissioner Wright. So ordered.

Hearing Case #46- Our Place- Permittee Rebecca Hobgood spoke to the Commission concerning her case. Ms. Hobgood stated that she had operated Our Place for 33 years without a violation. She further stated that Our Place is very busy during the summer due to Atlantic Beach, North Carolina's summer tourism trade, and that during this busy period, one of her bartenders served an alcoholic beverage to an intoxicated person. Ms. Hobgood explained that the bartender suspected the customer was intoxicated while serving him a second beer, but that the customer had requested that the bartender call a taxi to pick him up, so the bartender went ahead and served him the beer. Afterwards, ALE Agent Richard Thornell arrived to conduct an inspection of the premises, and found the customer to be intoxicated.

Ms. Hobgood sought a lighter penalty in her case because she did not want to deprive her employees of work right before Christmas. Chairman Fox asked what kind of consideration she was after, and Ms. Hobgood replied that she would like a warning issued to her business, or a lesser fine if possible. Chairman Fox asked if Ms. Hobgood's bartenders had attended an ABC class recently, and Ms. Hobgood replied that she didn't know that any had gone recently. Chairman Fox suggested that Our Place's suspension and fine be waived on the condition that Ms. Hobgood host an ABC class within the next thirty days, and Ms. Hobgood agreed. Chairman Fox made a motion to that effect. Seconded by Commissioner Joyner. So ordered. Mr. Gregory suggested that the case be continued to the December 10, 2004 hearing to allow for a response from ALE, and Chairman Fox agreed.

Hearing Case #4- Stop N Shop – Permittee Ashok Patel spoke to the Commission regarding his case. Before he made his statements, however, Ms. Cowick mentioned to the Commission that there was an error in the penalty shown on the Proposed Stipulation and Offer in Compromise for Stop N Shop. The penalty as presented called for a 20 day suspension, suspended upon payment of \$2,000.00. Ms. Cowick stated that she had spoken to Mr. Patel and that he had agreed to serve an active suspension of ten days and pay a fine of \$1,000.00.

Mr. Patel stated that before this year, his store had operated for eleven years without a violation, and based on this record he sought some leniency from the Commission. He agreed to the penalty stated by Ms. Cowick.

Mr. Patel stated that he wished for his suspension to begin on December 25, 2004. Mr. Gregory stated that he did not believe any ALE agents would want to pick up Mr. Patel's permits on Christmas morning, and offered to have the case moved to the December agenda so that the permits would be picked up in January. Mr. Patel stated that he wanted the suspension to begin on December 25 to coincide with the holidays due to his religious beliefs. Chairman Fox asked if Mr. Patel would mail his permits to ALE on December 24, and Mr. Patel agreed.

Ms. Cowick stated that ALE doesn't always pick up permits, and will sometimes allow permittees to keep their permits provided that they are not displayed on the licensed premises during the time of suspension. Chairman Fox asked Mr. Patel if he could remove the permits from his store's wall during the suspension, and Mr. Patel stated that he would, and would refuse delivery of alcoholic beverages during his suspension. Chairman Fox made a motion to change the penalty to ten days suspension and a fine of \$1,000.00, with such suspension to begin on December 25, 2004. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox asked Mr. Gregory for information concerning Hearing Case #28- Sgt. Pepper's Restaurant and Bar. Mr. Gregory informed Chairman Fox that Sgt. Pepper's Restaurant and Bar was currently out of business, and that the ABC Commission had already received payment for their violation. This case concerned sale of alcoholic beverages to an intoxicated person who immediately after was involved in an auto accident that resulted in a fatality. Chairman Fox asked Mr. Gregory if it was possible to determine what kind of alcoholic beverages were sold to the concerned parties in these types of cases. Mr. Gregory stated that this information could be gathered. Chairman Fox requested that the legal division begin to keep track of the types of beverages sold in these cases.

Commissioner Joyner made a motion to ratify the Offers in Compromise for the balance of the hearing cases. Seconded by Commissioner Wright. So ordered.

II. FIRST OFFENSE CASES – 57 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on November 8, 2004, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Community Mart - 201 Bragg Street, Raleigh, NC 27601
501 66 Service and Grocery - 22900 Aberdeen Hwy, Laurinburg, NC 28352
Kerr Drug 218 - 1110 Aberdeen Road, Laurinburg, NC 28352
K 38 Baja Grill - 5410 Oleander Drive, Wilmington, NC 28403
La Mexicana - 500 Warsaw Road, Clinton, NC 28328
Petro Express 25 - 100 South Polk Street, Pineville, NC 28134
Rookies - 107 Bryon Court, Elizabeth City, NC 27909

Sams Mart 42 - 2825 Little Rock Road, Charlotte, NC 28214
 Sams Mart 53 - 5115 Old Dowd Road, Charlotte, NC 28208
 Save More 211 - 1903 East Ash Street, Goldsboro, NC 27530
 Short Stop Food Mart 75 - 404 NC Hwy 111 South, Goldsboro, NC 27534
 Sneads Grove Convenient Store - 20501 Sneads Grove Road, Laurel Hill, NC 28351
 Store - 861 Williamson Road, Mooresville, NC 28117
 Travel Store 3 - Hwy 264 West, Washington, NC 27889
 Triple G Auto Service - 3822 Hwy 401 South, Louisburg, NC 27549
 Winn Dixie Store 2006 - 1526 Alleghany Street, Charlotte, NC 28208
 Bi Lo 444, Ashley Road - Charlotte, NC 28208
 Currins Minute Mart - 2406 Raleigh Road, Henderson, NC 27537
 Downeast Travel Centers - 2600 US Hwy 117 South, Goldsboro, NC 27530
 Duck Thru 6 - Hwy 17, Windsor, NC 27983
 Hong Kong Chinese Restaurant - 3003 Guess Road, Durham, NC 27705
 Handy Mart 54 - 3801 South Charles Street, Greenville, NC 27858
 Home Food Market - 117 North Main Street, Raeford, NC 28376
 Hooters of Greenville - 316 SW Greenville Boulevard, Greenville, NC 27834
 New Dragon Inn - 3823 Guess Road, Durham, NC 27705
 Quik Shoppe 2 - 5600 Brookshire Boulevard, Charlotte, NC 28216
 Sardys Convenient Store - 1814-A South Tryon Street, Charlotte, NC 28203
 Short Stop 64 - 526 Aberdeen Road, Raeford, NC 28376
 Taylors Store - 135 NC Hwy 45 North, Merry Hill, NC 27957
 Village Fare - 9801 Andrew Jackson Hwy, Laurel Hill, NC 28351
 Arrington Mart - 1805 Bill Lane Boulevard, Dudley, NC 27533
 A 1 Express - 603 East Main Street, Lincolnton, NC 28092
 Bo's Supermarket - 240 South Main Street, Raeford, NC 28376
 Chile Verde Mexican Restaurant - 1502 Mall Square, Wilkesboro, NC 28697
 Crankeys Little Market - North Turnpike Road, Wagram, NC 28396
 Eckerd Drugs 8543 - 806 East Ash Street, Goldsboro, NC 27530
 Friendly Mart 6 - 819 North Breazeale Avenue, Mount Olive, NC 28365
 Old Wire Road Convenience - 9240 Old Wire Road, Laurel Hill, NC 28351
 Short Stop 58 - 3800 Morganton Road, Fayetteville, NC 28314
 Store - 3776 Hwy 401, Louisburg, NC 27549
 Trade Mart 33 - 124 Hwy 55 West, Mt. Olive, NC 28365
 Time Out Market 15 - Route 5 Georges Branch Road, Candler, NC 28715
 B L's Discount Beverage - 7005 East Wilkinson Blvd Suite 1, Belmont, NC 28012
 J and L Clover Farms - 685 Rockfish Road, Raeford, NC 28376
 Hero House University - 2951 North Cherry Street, Winston Salem, NC 27105
 Firehouse - 6317 Market Street, Wilmington, NC 28405
 Petro Express 12 - 3800 Wilkinson Boulevard, Charlotte, NC 28214
 Amoco Food Shop - 3616 Poole Road, Raleigh, NC 27610
 Circle K 4838 - 9726 Old Monroe Road, Charlotte, NC 28105
 B K Mart - 2344 US 117 South, Goldsboro, NC 27530
 Bearpond Fresh Market - 3963 Raleigh Road, Henderson, NC 27536
 Petro Express 6 - 101 East John Street, Matthews, NC 28105
 Foodmart Plus - 5940 South Boulevard, Charlotte, NC 28217

Darryls Easy Shop 3 - 495 Haywood Road, Asheville, NC 28806
Sams Mart 16 - 4200 Glenwood Drive, Charlotte, NC 28208

Chairman Fox made a motion to ratify the Offers in Compromise for the first offense cases with the exception of First Offense Cases #4- K 38 Baja Grill and #46- Firehouse, which he had previously recused himself from ruling on. Seconded by Commissioner Joyner. So ordered.

Commissioner Joyner seconded the motion. So ordered. Commissioner Joyner made a motion to ratify First Offense Cases #4- K 38 Baja Grill and #46- Firehouse. Seconded by Commissioner Wright. So ordered.

III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the relocation of an ABC store in Charlotte, North Carolina. On October 5, 2004, the ABC Commission received a message from Chief Executive Officer Calvin McDougal of the Mecklenburg County ABC Board requesting the ABC Commission's approval to relocate an ABC store on John J. Delany Drive in Charlotte. On October 13, 2004, the ABC Commission requested that Alcohol Law Enforcement conduct an investigation of the proposed location, and on October 20, 2004, ALE Supervisor Richard Griffin began the investigation. The Mecklenburg County ABC Board plans to lease property in the Ballantyne Village Shopping Center located on John J. Delany Drive. The proposed location is approximately 3,900 square feet in size at a price of \$30 per square foot for the first two years, at which time the price increases to \$32 per square foot. The property is jointly owned by Terraces at Ballantyne LLC and Shields Property Company. No financial conflict of interest exists between the property owners and Mecklenburg County ABC Board members. The nearest church is the Saint Matthews Catholic Church located 2.1 miles from the proposed location. The nearest school is Saint Matthews Catholic School, also located 2.1 miles from the proposed location. To date, no objections to the opening of an ABC store at the proposed site have been received by the ABC Commission. Pursuant to ABC Commission regulations, a notice of intent to open an ABC store was posted at the proposed location on October 12, 2004. However, since the ABC Commission's November meeting was moved from November 12, 2004 to November 10, 2004 the November meeting fell on the 30th day of the sign's posting.

Mr. Herring recommended that the proposed location be approved by the ABC Commission contingent upon no opposition being received by the ABC Commission at close of business on November 10, 2004.

Commissioner Joyner recused himself from voting on this matter, citing the fact that his employer owned a development located near the proposed location.

Chairman Fox made a motion to approve the proposed location. Seconded by Commissioner Wright. So ordered.

IV. ABC STORE LOCATION – NEW HANOVER COUNTY ABC BOARD

Mr. Herring also addressed the Commission concerning the relocation of an ABC store in Wilmington, North Carolina. On October 8, 2004, the ABC Commission received a letter from Administrator Billy Williams of the New Hanover County ABC Board, requesting permission to relocate the ABC store located at 7050 Market Street in Wilmington. On October 14, 2004, the ABC Commission requested that Alcohol Law Enforcement conduct an investigation of the proposed site, and on October 21, 2004, ALE Agent Glenn Branch conducted the investigation. The proposed site is located at 8122 Market Street in Wilmington, approximately three miles from the current location. The new location will be a 4800 square foot self-service store. The property being purchased for this location is a two acre lot and costs \$650,000. The property is currently owned by John Vincent and located outside the city limits of Wilmington. No conflict of interest exists between the property owner and the New Hanover County ABC Board. The nearest church is the Liberty Baptist Church, located 6/10ths of a mile from the proposed location. The nearest school is Ogden Elementary School, located 2.8 miles from the proposed location. Pursuant to ABC Commission regulations, a notice of intent to open an ABC store was posted at the proposed location on October 7, 2004. To date, no objection has been received by the ABC Commission concerning the opening of an ABC store at the proposed site.

Mr. Herring recommended that the location be approved by the ABC Commission.

Chairman Fox recused himself from ruling on this matter.

Commissioner Joyner made a motion to approve the store location. Seconded by Commissioner Wright. So ordered.

V. REQUEST FOR DECLARATORY RULING ON SPLIT CASE FEES FOR WINES

Acting General Counsel Tim Morse provided information to the ABC Commission concerning this matter. Mr. Morse stated that the main concern was determining the procedural posture of this issue and to address this matter, he felt that it was best if a party claiming to be aggrieved by this matter made the request for a ruling. He stated that while in 2003 the North Carolina beer and wine wholesalers specifically requested that this issue be addressed, but this request was later withdrawn, and currently there is no outstanding request.

Chairman Fox recommended that this matter be continued to the December 10, 2004 Commission meeting to allow time for any concerned parties to file a formal request. Mr. Morse stated that an effort was made to inform all parties concerned in the previous request of the matter's current hearing, but was unsure if independent wholesalers had been notified. He requested that a deadline date be established for parties who wished to submit new information regarding this item to the ABC Commission. Chairman Fox suggested the date be set as December 1, 2004.

Chairman Fox moved that this matter be continued to the December 10, 2004 hearing. So ordered.

VI. OTHER BUSINESS

Mr. Herring addressed the Commission concerning sales information for the ABC Boards during the year ending June 30, 2004. These figures indicate that the Spirituous Liquor business had increased by a total of 7% and that the ABC Boards' profits were up approximately 18% over last year's figures. In addition, distributions were up approximately 14%. The least profitable ABC Board was the Lincoln County ABC Board, which had just opened a month prior to the closing of the year. Nine ABC Boards failed to post a profit, which was down from 18 unprofitable boards in 2003. Based on this information, Mr. Herring stated that he would be meeting with State construction contractors to gather estimates for adding 50,000 to 100,000 square feet to the warehouse.

Commissioner Joyner asked if the ABC Commission had adequate land to build such an extension, and Mr. Herring replied that the land was available, and currently a maintenance building was located on it. He proposed relocating the maintenance building to make way for a single-story 50,000 square foot structure, or possible a two-story structure.

Mr. Herring also mentioned that, at the close of this year, the ABC Commission's shipments were estimated to be 3.8 million cases, which roughly equals the shipment levels last seen in 1984.

Mr. Herring also provided an update concerning the rewriting of job descriptions currently being handled by Drake and Associates. The contract with Drake and Associates had been extended by 60 days, and to date Mary Lou Drake had submitted seven new job descriptions that needed to be reviewed and passed on to the Department of Commerce. Some positions will be flagged for future study, but 75% of the positions at the ABC Commission would be reviewed and revised as necessary within the next 45 days.

The date for the January 2005 Commission meeting was changed from January 7, 2005, to January 14, 2005.

Chairman Fox stated that he had spoken with LB&B Associates and discovered that the retroactive pay would be given to the employees within a week of the November meeting.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Jason Hall, Legal Division